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COMMITTEE ON THE RIGHTS OF THE CHILD

Twelfth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the Rights of the Child: China

1. The Committee considered the initial report of China (CRC/C/11/Add.7) at its 298th to 300th meetings (CRC/C/SR.298-300), held on 28 and 29 May 1996, and adopted* the following concluding observations:

A. Introduction

2. The Committee notes that the initial report of the State party was prepared in accordance with the general guidelines. The Committee appreciates the self-critical elements of the report, although it is noted that greater focus was placed in the report on the content of domestic legal and administrative provisions than on their practical application. It also welcomes the State party's replies to the written list of questions posed by the Committee.

3. The Committee notes with satisfaction that different ministerial departments and other bodies were involved in the preparation of the report. The Committee expresses its appreciation to the State party for having ensured that many of these departments were represented on the delegation presenting the report to the Committee. The Committee welcomes the willingness of the State party and its delegation to engage in a constructive dialogue with the Committee. It appreciates the delegation's frank admission that various difficulties remain to be overcome before the rights and principles provided for in the Convention are guaranteed to all children in China.

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* At the 314th meeting, held on 7 June 1996.

B. Positive factors

4. The Committee takes note of the considerable improvement in the general standard of living which has been recorded in recent years. The Committee further notes the programme outline which has been devised at the national level and which is in the process of being developed in all 30 provinces and autonomous regions and implemented as a follow-up to the goals set in the Declaration and Plan of Action adopted by the World Summit for Children in 1990. Note is also taken that an outline is being prepared as a follow-up to the Fourth World Conference on Women held in Beijing.

5. The considerable progress achieved by the State party in reducing the infant and under-five mortality rates, especially through the extensive efforts focused on sustaining immunization coverage, increasing immunization rates and reducing the incidence of child malnutrition, is to be commended. The State party's commitment to protecting, promoting and supporting breast-feeding as well as to establishing children's hospitals is also welcomed.

6. Noteworthy also are the various activities undertaken and supported by the State party to increase school enrolment. The State party's recognition of the importance of supporting education as a tool for fostering social and economic development is noted. Special mention is accorded to Project Hope which is designed to assist children in poor districts, as well as to the Spring Buds Scheme, to promote girls' enrolment or return to school to complete their primary education.

7. The Committee also notes the information contained in the report that various laws and administrative regulations relevant to the rights of the child have been developed and introduced. The Compulsory Education Act, the Protection of Minors Act and the Protection of the Disabled Act and the work undertaken by the Help the Disabled Movement are noted.

C. Factors and difficulties impeding the implementation of the Convention

8. Taking into account the fact that the number of children in China represents one fifth of the child population of the world and that the population is spread throughout the vast territory of the country, the Committee notes that the task facing China in meeting the needs of all children under its jurisdiction presents enormous challenges, not least in the economic and social fields.

9. As was stated by the State party, the legacy of certain historical feudal traditions in parts of the country and the persistence of other harmful attitudes are adversely affecting children's lives and healthy growth.

D. Principal subjects of concern

10. The Committee notes the establishment of various structures for the promotion and coordination of the implementation of the Convention on the Rights of the Child though it remains concerned at the insufficient measures taken to ensure their effectiveness with regard to monitoring the Convention's implementation at the national, provincial and local levels.

11. The Committee is concerned about the prevailing disparities between urban and rural areas and between regions in relation to the provision of and access to social services, including education, health and social security.

12. It is the Committee's view that inadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the rights of girls and of disabled children.

13. The Committee feels there is a need to consider questions relating to the definition of the child, including in relation to the age of criminal responsibility, so as to ensure that national legislation and related procedures duly take into consideration the provisions and general principles of the Convention, including the best interests of the child.

14. In the view of the Committee, insufficient steps have been taken to create awareness of the provisions and principles of the Convention, notably its articles 2, 3, 6 and 12, among adults, including professionals working with or for children, and children themselves.

15. While noting the measures taken to confront the problems of discrimination on the grounds of gender and disability, the Committee remains concerned at the persistence of practices leading to cases of selective infanticide.

16. Serious concerns remain as to the effectiveness of measures taken to ensure the registration of all children, through the household registry. As acknowledged by the State party, absence of registration may be due to parents' lack of knowledge of the relevant law and policy and of the negative effects of non-registration on children's legal status. The migration of people from their traditional place of residence may cause similar difficulties. Deficiencies in the registration system lead to children being deprived of basic safeguards for the promotion and protection of their rights, including in the areas of child trafficking, abduction, sale and maltreatment, abuse or neglect. In this connection, the situation of "unregistered girls" as regards their entitlement to health care and education is a matter of concern to the Committee.

17. The Committee remains concerned about the actual implementation of the civil rights and freedoms of children. The Committee wishes to emphasize that the implementation of the child's right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention and that limitations on the exercise of this right can only be placed in conformity with paragraph 3 of article 14 of the Convention.

18. The Committee is extremely concerned about the situation of children provided with care in welfare institutions. The Committee observes that the very high mortality rate in such institutions is a cause for serious alarm. While the Committee appreciates the steps being taken to ensure, inter alia, the separation of children from adults in institutions and in providing

training to the staff, it remains deeply concerned about the inadequate measures adopted to ensure qualitative care to children as required by article 3, paragraph 3, of the Convention.

19. The Committee shares the concern expressed by the State party as regards the number of children in China who still do not attend school. It is also concerned about reports that school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that the quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may disadvantage Tibetan and other minority pupils applying to secondary and higher level schools.

20. In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population.

21. The Committee remains concerned that national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution. It is the opinion of the Committee that the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment. Further, it is noted that under the Penal Code a juvenile offender aged between 14 and 18 may legally be sentenced to life imprisonment for a particularly serious crime. Although the sentence of life imprisonment may be reduced on the grounds of "repentance" or "merit" and judicial experience in China shows that sentences to life imprisonment can benefit from a mitigation, the Committee wishes to stress that the Convention prescribes that neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below the age of 18. It is the Committee's view that the aforementioned provisions of national law are incompatible with the principles and provisions of the Convention, notably those of its article 37 (a).

22. Additionally, the Committee remains concerned about the extent to which adequate safeguards are in place within the present system of juvenile justice in China. In this context, the Committee expresses concern with respect to the access of parents during the pre-trial detention of their children, the possibilities for the provision of legal assistance to children, the sufficiency of the time allocated for the preparation of a child's defence as well as respect for the presumption of innocence and the principle of nullum crimen sine lege, nulla poena sine lege as reflected in article 40, paragraph 2 (a).

23. The Committee shares the State party's concern that there has been an upsurge in recent years of kidnapping and abduction of children. In this connection, the Committee wishes to express its serious concern about the apparent inadequacy of measures taken to prevent and combat the problems of the sale, trafficking and sexual exploitation of children.

E. Suggestions and recommendations

24. In the light of the discussion in the Committee on the question of the continuing need for the State party's reservation to article 6 of the Convention and the information provided by the State party that it is open to considering making adjustments in regard to its reservation, the Committee encourages the State party to review its reservation to the Convention with a view to its withdrawal.

25. The Committee recommends that a comprehensive review of the domestic legal framework be undertaken. Such a review requires that the provisions and principles of the Convention serve as both its guide and support and that it encompass not only national but also local-level legislative and administrative measures impacting on the rights of the child.

26. The Committee recommends that the State party consider the possibility of setting up an independent institution such as an Ombudsperson for children's rights. Such a mechanism can play an important role both in monitoring institutions working in the field of the rights of the child, including in the areas of welfare, education and juvenile justice, as well as in contributing to the more rapid identification of emerging problems in these fields with a view to their constructive solution.

27. The Committee, in taking note of the activities undertaken throughout the State party to develop and implement outlines for the follow-up to the World Summit for Children, recommends that future outlines, development plans, programmes or plans of action on the rights of the child be prepared on the basis of all the provisions and principles of the Convention.

28. The State party is urged to take further action to strengthen its capacity for a systematic approach to collecting disaggregated statistical data and other information on the status of children. The Committee recommends that serious consideration be given to this matter by the State party as the analysis of such data and information is one additional and important means of designing programmes for the implementation of the rights of the child.

29. It is the recommendation of the Committee that the principles and provisions of the Convention on the Rights of the Child be widely disseminated throughout the country, including through the mass media, such as radio and television. It is suggested that the State party may wish to request the cooperation of the United Nations Children's Fund in this regard. The translation of the Convention into the major national minority languages would form an integral part of these dissemination activities.

30. The Committee would also like to recommend that measures be taken to incorporate education on the principles and provisions of the Convention into training programmes for different professionals working with or for children, including social workers, personnel in welfare institutions, doctors, health and family planning workers, teachers, judges, lawyers, police, personnel in detention facilities and armed forces personnel as well as government officials and decision makers.

31. A review of the policy in place for the implementation of article 4 of the Convention is recommended by the Committee. The Committee wishes to emphasize that the focus of any such review should be in relation to the measures being taken to reduce regional and urban-rural disparities in the allocation of resources for the rights of the child, especially with respect to health and education.

32. Equally, the Committee recommends that greater attention and consideration be given to the provision of social security. It is the Committee's view that remedial measures should be sought to avoid families' over-dependence on their children, in particular providing them with care in their old age.

33. Further measures are required to ensure the implementation of the general principles of the Convention. With regard to article 12 of the Convention, it is the Committee's view that greater attention should be accorded to providing children with opportunities to participate and have their views heard and taken into account. It is important that awareness be developed of the child as a subject of rights and not only as a recipient of protection. The Committee suggests that further attention be accorded to reviewing the effectiveness of procedures available to children for the presentation and investigation of complaints of their abuse or neglect, in the event of such violations arising from, inter alia, domestic violence and abuse in institutions or detention facilities.

34. The Committee concurs with the observations of the State party that concerted action is called for to address the problems faced by the girl child. While acknowledging the measures taken by the State party in campaigning and creating awareness among the population of the equality of girls and boys, the Committee suggests that local and other leaders be invited to take a more active role in supporting the efforts to prevent and eliminate discrimination against the girl child and to provide guidance to communities in this regard.

35. From information provided by the State party, the Committee notes that, while the incidence of disability among the child population is low, disabled children have been the victims of abandonment and discrimination. In this regard, the Committee recommends that the State party undertake further research on the measures required to prevent and combat discrimination on the ground of disability.

36. It is the Committee's view that family planning policy must be designed to avoid any threat to the life of children, particularly girls. The Committee recommends in this regard that clear guidance be given to the population and the personnel involved in the family planning policy to ensure that the aims it promotes are in accordance with principles and provisions of the Convention, including those of its article 24. The State party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.

37. The Committee acknowledges the information provided by the State party on the results of two population censuses conducted in 1982 and 1990 and that the

non-registration of new-born girls is a major factor contributing to the imbalance in the ratio of boys to girls. The Committee, while noting that the State party has adopted measures to reduce the under-reporting of girl children, recommends that urgent measures be taken to develop more widespread awareness of the importance of registration. In the light of recent developments such as population movements within the country, the Committee also recommends that the State party consider the possibility of reviewing the effectiveness of the existing system of registration.

38. It is the opinion of the Committee that further measures should be taken by the State party to promote the possibilities for children, particularly those who have been abandoned, to grow up in a home-like environment through, inter alia, fostering and adoption. The Committee also suggests that the State party review the present legislation on adoption, in the light of the principles and provisions of the Convention, notably those of its articles 20 and 21, so as to evaluate the effectiveness of national legislation in facilitating domestic adoption.

39. The State party is urged to take further action to improve the situation of children in welfare institutions. In this regard, the Committee wishes to draw the particular attention of the State party to the principles and provisions of the Convention, notably those of its articles 3 (3) and 25. The Committee recommends that a further review of the training provided to the staff of such institutions be undertaken. The training should be reviewed from the perspective of securing the most effective pedagogical, professional and child-oriented approach to the provision of care. Measures are also required to ensure the effective supervision of staff and the periodic review of the treatment provided to children in such institutions. In the light of other issues raised during the dialogue with the State party, the Committee also suggests that further consideration be given to reviewing the systems in place for monitoring welfare institutions and for providing such institutions with adequate financing. Within the framework of facilitating access to knowledge and the sharing of expertise and experiences on these matters, including in the light of the provisions of articles 4, 23, 24, 28 and 45 of the Convention, the Committee suggests that consideration be given to the possibility of inviting the United Nations Children's Fund, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization to cooperate with the State party in this regard.

40. The Committee suggests that a review be undertaken of measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing.

41. The Committee recommends that the State party seek a constructive response to the concerns expressed in paragraph 20 above.

42. The Committee concurs with the contents of the observations adopted by the Committee against Torture where the points raised are relevant to the situation of children below the age of 18. The Committee recommends that a thorough review of the legislative and administrative measures and procedures

in place within the State party in relation to juvenile justice be reviewed to ensure their conformity with the principles and provisions of the Convention, notably its articles 37, 39 and 40, and other instruments relevant to the field of the administration of juvenile justice, in particular the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The Committee would like to suggest that the State party consider the possibility of requesting assistance in this regard from the relevant United Nations bodies, including the Centre for Human Rights.

43. With regard to the issue of child labour, the Committee encourages the State party to consider the possibility of becoming a party to ILO Convention No. 138 concerning the minimum age for employment.

44. Finally, the Committee recommends that the widest dissemination be given to the State party's report, the discussion on the report in the Committee and the concluding observations the Committee has adopted following examination of the report.

45. In the light of the provisions of article 44, paragraph 4, of the Convention, the Committee requests that further written information be provided to the Committee with respect to the concerns raised in paragraphs 18, 21, 22 and 23 of the present observations. The Committee would appreciate receiving this information by December 1997.

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